Magnet Coal, Inc. *and* District 17, United Mine Workers of America. Case 9–CA–27592

April 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On January 16, 1992, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below and to adopt the recommended Order as modified.[2]

1. We agree with the judge that the Union had an objective factual basis for believing that the Respondent and B & C Bituminous Mining, Inc. were alter egos or joint employers when the Union made its initial information request on April 20, 1990.[3] In addition to the factors relied on by the judge, we note that one of the Respondent's owners, Clyde Dickerson, testified that sometime after B & C began operations near the Respondent's Island Creek Coal facility in the fall of 1988,[4] he had a telephone conversation with the Union's president, Robert Phalen, in which he (Dickerson) offered to sign a contract with the Union on behalf of B & C ''if we could work something out with the men.'' (Dickerson also testified that Phalen said that that would not be possible.) This admission—that one of the owners of the Respondent held himself out to the Union as empowered to sign a union contract on behalf of B & C—is evidence that the Union had been advised that the Respondent effectively controlled the labor relations of B & C, and is further support for the Union's belief that the two employers were alter egos or joint employers.[5]

2. In its exceptions, the Respondent argues that the judge erred in finding that the Union's information request was not overly broad[6] We find no merit to that contention.

The Respondent's first argument is that, because it and B & C were alleged to be alter egos during the period when B & C was operating in West Virginia, the Union's request was overly broad to the extent it encompassed information regarding the relationship between the two companies prior to that time. We reject that argument[7] An alter ego finding may be predicated in part on one employer's having created the other, as a ''disguised continuance'' of itself, in order to evade its responsibilities under the Act[8] That being the case, the circumstances surrounding the creation of the new entity are patently relevant to an alter ego inquiry. Thus, information concerning the ownership, management, business purpose, operations, customers, equipment, and supervision of the two companies before B & C began operations in West Virginia, when compared with the same information for the period in which B & C operated in West Virginia, would indicate whether B & C really was a new entity, or simply a repackaged portion of the Respondent's previous operations. Contrary to the Respondent, then, the information requested for the earlier time period was relevant to the Union's attempt to determine whether an alter ego relationship existed beginning in 1988.

The Respondent also urges that the Union sought information that was irrelevant because it was not related to the factors that determine alter ego status. In support of that contention, the Respondent cites only the Union's Interrogatory 4, which it characterizes as seeking the identity of every employee who ever worked

[1] We correct the judge's citation to *Arch of West Virginia*, 304 NLRB 1089 (1991).

[2] We shall modify par. 2(b) of the judge's recommended Order to correct a typographical error.

[3] We find no merit in the Respondent's exception to the judge's reliance on hearsay testimony in finding that the Union had an objective factual basis for that belief. The judge properly overruled the Respondent's hearsay objections at the hearing, stating that testimony concerning what the Union had been told about the relationship between the Respondent and B & C was not being admitted for the truth of the matters asserted. A union's information request may be based on hearsay. *Leonard B. Hebert Jr.*, 259 NLRB 881, 885 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983), cert. denied 464 U.S. 817 (1983).

[4] Although the judge did not discuss this testimony, he broadly credited Dickerson. Dickerson was unable to recall specifically when this conversation took place. However, it is undisputed that B & C ceased its operations early in 1990; indeed, the shutdown of B & C was the event that led to the Union's April 20 information request. It is, to say the least, highly unlikely that the Union and B & C would have been discussing the possibility of the latter's signing a union contract after it had ceased operations. And if the discussion had taken place after the shutdown, it is almost inconceivable that Dickerson would not have mentioned the fact, instead of characterizing the conversation, as he did, as having occurred ''sometime later after we had started'' in 1988. We therefore infer that this conversation took place before B & C ceased operations, and hence before the Union made its information request.

[5] Phalen was not asked to testify about this conversation with Dickerson. In this regard, he testified only that he had not held any negotiations concerning whether B & C would sign a union contract, but that ''there may have been some conversations.'' He later testified, however, that he suspected, but was not sure, that the owners of the Respondent, Dickerson and Dehart, also were officers of B & C. Dickerson's having held himself out as authorized to sign a union contract on B & C's behalf may have been a contributing factor to Phalen's belief that Dickerson was an officer of B & C.

[6] As the Respondent notes, the judge did not explain that finding.

[7] It bears repeating that the standard for assessing the relevance of information requested by a union is a ''liberal, discovery-type standard.'' See, e.g., *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990).

[8] See, e.g., *Mar-Kay Cartage*, 277 NLRB 1335, 1340–1342 (1985).

for either the Respondent or B & C. The Respondent contends that the only relevant information in this regard would be the identities of employees who performed services for *both* companies during the ''relevant time period.''[9]

Again, we are unpersuaded. Interrogatory 4 asks for the identity of any individual who performed a service for either company. It would obviously be relevant to the Union's alter ego inquiry if one of the Respondent's owners performed a service—e.g., as an engineer—for B & C, even if that person did not perform services for the Respondent. Under the Respondent's straitened theory of relevance, however, the Union would not be furnished that information. In any event, an individual who worked only for, say, B & C might be able to provide relevant information to the Union, such as whether managers or employees of the Respondent were sent to work at B & C while they were still on the Respondent's payroll, or whether B & C used equipment belonging to the Respondent. For all these reasons, we find that the Union's information request was not overly broad.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Magnet Coal, Inc., Logan County, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(b).

''(b) Post at its facilities in Logan County, West Virginia, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.''

[9] We have rejected the Respondent's view of what the relevant time period is for purposes of this case.

Linda B. Finch, Esq., for the General Counsel.
L. Anthony George, Esq. (Jackson & Kelly), of Charleston, West Virginia, for the Respondent.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Charleston, West Virginia, on October 16, 1991. Upon an unfair labor practice charge filed by the Union, District 17, United Mine Workers of America, on June 8, 1990,[1] the Regional Director for Region 9 issued a complaint on July 16, alleging that the Company, Magnet Coal, Inc., violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to furnish the Union with information necessary for, and relevant to, the Union's performance of its collective-bargaining function. The Company filed a timely answer, denying that it had committed the alleged unfair labor practices. Following close of the hearing, the General Counsel and the Company filed briefs.

On the entire record, including my opportunity directly to observe the witnesses and their demeanor, and after considering the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, with office and place of business in Logan County, West Virginia, mines coal for which it received, during the calendar year ending December 31, 1989, in excess of $50,000 from Island Creek Coal Company, a corporation doing business in the State of West Virginia. During the same calendar year, Island Creek Coal Company, in the course and conduct of its business operations, sold and shipped, from its West Virginia facilities, coal valued in excess of $50,000 directly to points outside the State of West Virginia. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find, that District 17, United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

In 1987, the Company, which was owned by Clyde E. Dickerson and Virgil Dehart, began mining coal as a contractor for Island Creek Coal Company, on Island Creek's properties in Logan County, West Virginia. In the same year, the Company signed an interim collective-bargaining agreement with the Union, covering a unit of the Company's coal production employees. Thereafter, on November 8, 1989, the Company and the Union signed the National Bituminous Coal Wage Agreement of 1988, referred to below as NBCWA, and thus agreed to extend its coverage to the Company's coal production employees, until its expiration, on February 1, 1993.[2]

[1] All dates are in 1990 unless otherwise stated.

[2] The agreed appropriate bargaining unit is as follows:

All employees of the Company engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal except by waterway or rail not owned by the Company, repair and maintenance work normally performed at the mine site or a central shop of Company and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the Company excluding all coal

Continued

In 1988, B & C Bituminous Mining, Inc., which Dickerson and Dehart also owned, began mining coal under a contract with Island Creek, on a site approximately 1 mile from where the Company was operating under its Island Creek contract. I find from Union President Phalen's testimony that B & C submitted some dues to the Union on behalf of its employees. In a posthearing brief, the General Counsel asserts that in 1988, B & C signed an interim agreement with the Union's parent, the International Union, United Mine Workers of America. According to the General Counsel, the interim accord bound B & C to the National Bituminous Coal Wage Agreement of 1984 and to NBCWA. However, I find that B & C did not sign the interim agreement.

The General Counsel's assertion rested upon uncertain ground. The Union's president, Robert Phalen, testified that B & C signed an interim agreement in 1988, and that he ''probably'' had seen it. Phalen also testified that B & C would have signed the interim agreement prior to January 31, 1988. However, neither of the parties offered an executed interim agreement bearing a date prior to January 31, 1988.

In response to Phalen's testimony, B & C's owners, Clyde Dickerson and Virgil Dehart, who impressed me as frank witnesses, firmly denied that B & C had signed either the NBCWA, or an interim agreement. A document bearing Dehart's signature, and purporting to be a 1988 interim agreement between B & C, and the United Mine Workers, was not authenticated and, thus, did not damage his or Dickerson's credibility.

Indeed, there is record evidence suggesting that the document is false. One object of interest in this regard is the assertion on the top of its first page that October 10, 1988, was its execution date. This date was more than 8 months after the execution of the NBCWA. President Phalen admitted that there would have been no reason to execute an interim agreement in October 1988. A second ground for suspicion, also noted by President Phalen, was the apparent alteration of the year appearing after ''October 10,'' to show 1988, instead of 1987. Counsel for the General Counsel expressed a similar opinion. I find, therefore, that B & C did not execute any collective-bargaining agreement with the Union or with the United Mine Workers.

Early in 1990, B & C ceased operations. Union President Phalen heard that in the wake of the shutdown, B & C had laid off some of union members and had stopped paying dues. Phalen understood that under the NBCWA, laid-off employees had job security rights and were entitled to extended medical benefits based on the number of man hours worked in the preceding 24 months. He also thought that B & C's laid-off employees would come under these provisions, if the Company and B & C constituted a common or single employer, or if one were the alter ego of the other.

By April 20, Union President Phalen knew that the Company and B & C were both owned by Gene Dickerson and Virgil Dehart, and shared the same mailing address. Also, by that time, employees, who worked at the Island Creek sites, and the Union subdistrict office at Logan, West Virginia, had told Phalen of equipment interchanges between the two firms.[3]

On April 20, Phalen, on the Union's behalf, sent a letter to Virgil Dehart, the Company's vice president, seeking information bearing on whether the Company and B & C constituted a joint employer or were alter egos of each other. The relevant portions are as follows:

> As you know, the Union has reason to believe that Magnet Coal Co. and B & C Bituminous Mining, Inc., constitute a joint employer or alter ego of each other; and that problems have arisen concerning Job security and the provision of employer health benefits, among other things. In order that the Union may fulfill its statutory duty to monitor and enforce the contractual rights of your UMWA employees we need, and hereby request the following information.
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> For your convenience, these latter requests are divided into Documentary Requests (I) and Interrogatories (II) below and are applicable to B & C. Bitminous Mining, Inc. (''B & C'') and Magnet Coal, Inc. (''Magnet'').
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> I. *Documentary Requests*
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> 1. Copies of the Legal Identity Reports filed with MSHA for all operations owned, leased, controlled by B & C and Magnet.
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> 2. Copies of all mining permits in existence presently and during the 1984 National Bituminous Coal Wage Agreement, isued [sic] by State and/or Federal regulatory agencies.
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> 3. Copies of all ''Annual Return Report of Employee Benefit Plan'' (Form 5500), or any other report in connection with the payment of employee benefits filed with the Internal Revenue Service, from 1985 to the present.
>
> 4. Copies of all notices given by B & C and/or Magnet to the West Virginia Commissioner of Labor regarding any contract, subcontract, lease or sublease for any mining operations between 1985 and the present.
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> 5. Copies of any Withdrawal Liability Notice and Demand, required by Section 4219 of ERISA (21 U.S.C. Section 1399), or any opinions, documents and correspondence to or from the UMWA Health and Retirement Funds or anyone else concerning any withdrawal liability of Magnet or B & C.
>
> 6. Copies of all coal sales contracts between Magnet and its purchasers. Naturally, you may feel free to delete the actual price per ton of coal received and such other similar financial information during the term of the 1988 National Bituminous Coal Wage Agreement.
>
> 7. Copies of all coal sales contracts between B & C Coal Company and its purchasers. Naturally, you may feel free to delete the actual price per ton of coal received and such other similar financial information.

inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

[3] In its brief, the Company contends, for the first time, that Phelan's testimony regarding the equipment interchange and the common mailing address cannot be considered on the ground that it was improper rebuttal. In addition to its untimeliness, the Company's challenge to my discretion in allowing Phelan's rebuttal testimony is wholly without merit. *U.S. v. Ryan*, 232 F.2d 481, 482 (2d Cir. 1956).

8. Copies of all contract mining agreements between Magnet, B & C and Island Creek Coal Co. Again, you may feel free to delete the price per ton received.

9. Copies of *all* dues transmission and/or check-off lists submitted by either company to the UMWA.

10. Copies of *all* dues check-off and/or authorization cards submitted to either company by employees.

II. *Interrogatories*

In addition to the above documentary requests, please provide the requested information for the time period from February 1, 1988 to the present for:

Magnet Coal Company, Inc.
B & C Bituminous Mining, Inc.

1. Identify the name, title(s), and company of any officer, director, or any other management representative who held or holds a position in either company. In each case, also identify the applicable time period.

2. Identify the name, job title(s), and company of any person who held or holds a function related to labor relations in either company. In each case, also identify the applicable time period and the job duties of the individual in question.

3. Identify the customers of your company which are now or formerly customers of either company. In each case, also identify the applicable time period and the specific company per customer.

4. Identify the name, job title, and company of *any individual* who performed or performs any service, including clerical, administrative, bookkeeping, managerial, engineering, sales estimating, or other services for either company. For each such person, also identify the time period, company and the service in question.

5. Identify any common insurance carrier(s) used by either company for every insurance-related employment benefit, including health insurance. Specify the exact benefit and company per item.

6. Identify any equipment exchanged, sold or leased between either company. Identify the approximate date and parties involved in the arrangement.

7. Identify any employees, supervisory personnel, or managers who have transferred between either company. For each such person, give job title, current company, approximate date of transfer and company from which the individual transferred.

8. Identify the entire hiring procedure for both companies and provide samples of the application form(s) utilized in processing the application.

We request your prompt response.

In the letter's opening paragraph, Phalen linked the request for information to ''problems . . . concerning Job security and the provision of employer health benefits.'' The Company did not reply to this request for information. On April 30, May 11, and June 20, Phalen sent followup requests for the information sought in his initial letter of April 20. To date, the Company has not responded to the Union's requests for information.

In Phalen's view, as expressed in his testimony before me, and in his letter of April 20, the information requested would be relevant to the Union's duty as an exclusive collective-bargaining agent of a unit of the Company's employees, to determine if the job security and health benefit provisions of the NBCWA applied to B & C's employees. Phalen's interest in finding out about the Company's connection with B & C with respect to job security arose from article II of that agreement, entitled ''Job Opportunity and Benefit Security (Jobs),'' and from article XVII, entitled ''Seniority.''

If NBCWA covered B & C's employees, their layoffs might be averted or shortened. Section A of article II covers job opportunities ''at any existing, new or newly acquired non-signatory bituminous coal operation of [the Company].'' Article XVII sets out, among other provisions, a definition of seniority, layoff procedures, recall rights, the procedure for recall of persons on layoff, and the rights of employees to transfer to an employer's other mines. Phelan's testimony and his letter of April 20 show his awareness that under NBCWA, ''[i]f in fact, it is shown that a common single employer exists, those folks that worked for B & C could have job rights with Magnet itself.''

Phelan's letter of April 20, and his testimony also show that he wanted to determine if B & C 's employees ''were entitled, under the contract, to extended health benefits.'' Phelan's testimony reflects his understanding, as of April 20, that under NBCWA, the Company would be responsible for providing extended health benefits to B & C's laid-off employees, if it were shown that the two firms were ''one and the same.''

If B & C's employees were covered by NBCWA, article XI of that contract covers employees' sickness and accident benefits. Section (b) of article XI prescribes conditions for the eligibility of employees of signatory employers for those benefits. Section (c) of the same article fixes the commencement and duration of employee benefits

B. *Analysis and Conclusions*

The General Counsel argues that the Union was entitled to the information requested in its letter of April 20, and that the Company's refusal to fulfill that request violated Section 8(a)(5) and (1) of the Act. The Company rejects the General Counsel's argument first on the ground that the Union had no bargaining obligation with regard to B & C's employees. The Company also argues that even if such bargaining obligation might have arisen if the two firms were alter egos, the General Counsel has not shown that the Union had the necessary factual basis for issuing its demand of April 20 for information regarding their relationship. The Company's final contention is that the Union's request was ''overly broad.'' For the reasons set forth below, I find that the Company unlawfully refused to comply with the request for information in the Union's letter of April 20.

Where, as here, ''a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales, and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information.'' *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984). Also, where, as in the instant case, a union has asked an employer for information to show either an alter ego, or a joint employer relationship, the union is entitled to such information if it demonstrates that when it made this request it had ''an objective factual basis for be-

lieving that such a relationship existed. *M. Scher & Son*, 286 NLRB 688, 691 (1987).

I find that the Union has shown its entitlement to the information requested in its letter of April 20 to the Company. In that letter, the Union expressed legitimate concerns about the plight of B & C's laid-off employees. In particular, those concerns included job security and health benefits. If, as the letter suggested, the NBCWA covered B & C's employees, the Union had a statutory obligation to enforce all of their rights under that contract. If, as the Union suggested in its letter of April 20, the Company and B & C were alter egos of each other or joint employers, the NBCWA would apply to B & C's laid-off employees. Under NBCWA articles II and XVII, B & C's laid-off employees might obtain immediate reemployment at the Company's operations, or at least be on a list for recall there. Also, NBCWA's article XI might provide them with extended sickness and accident benefits. Thus, I find that the Union's request for information regarding the relationship between the Company and B & C ''had sufficient probable and potential relevance here.'' *Maben Energy Corp*., 295 NLRB 149 (1989).

I also find that the record shows that by April 20, the Union had ''an objective factual basis'' for believing that the Company and B & C were either joint employers or alter egos of each other, and, therefore, constituted a single employer for purposes of NBCWA's articles II, XI, and XVII. Thus, by that date, the Union knew that the Company and B & C had common ownership and had the same mailing address. The Union also had heard from employees on the jobsites, and from its Logan suboffice, that the Company and B & C had interchanged equipment. I find that this information, including the hearsay reports from employees and the Union's suboffice, provided the Union with an objective basis for its stated belief that the Company and B & C were either joint employers or alter egos of each other.

I find that the Union has shown that all of the the information requested in its letter to the Company, dated April 20, was relevant and essential to the performance of its duty as the collective-bargaining representative of the Company's employees covered by the NBCWA. The Act required that the Company furnish the requested information to the Union. I find therefore, that the Company, by failing and refusing to provide all of the information requested by the Union in its letter of April 20, violated Section 8(a)(5) and (1) of the Act. *Arch of West Virginia*, 304 NLRB 1089 (1991).

CONCLUSIONS OF LAW

1. The Company, Magnet Coal, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, District 17, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since November 8, 1989, the Union has been the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the following appropriate unit:

> All employees of Magnet Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Magnet Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Magnet Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Magnet Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

4. By failing and refusing to furnish the Union with the information requested by it in its letter dated April 20, 1990, Magnet Coal, Inc. has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Magnet Coal, Inc., Logan County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with District 17, United Mine Workers of America, as the exclusive bargaining representative of the employees in the following appropriate unit, by refusing to furnish District 17 all of the information requested in District 17's letter to the Company, dated April 20, 1990, and such other information as District 17 may request, which is necessary and relevant to District 17's performance of its function as the exclusive bargaining representative:

> All employees of Magnet Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Magnet Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Magnet Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Magnet Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish to District 17, in writing, all the information requested in District 17's letter to the Company, dated April 20, 1990.

(b) Post at its facilities in Logan County, West Virginia, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Company has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with District 17, United Mine Workers of America as the exclusive bargaining representative of the employees in the following appropriate unit, by refusing to furnish District 17 all of the information requested in District 17's letter to us, dated April 20, 1990, and such other information as District 17 may request, which is necessary and relevant to District 17's performance of its function as the exclusive bargaining representative:

> All employees of Magnet Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Magnet Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Magnet Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Magnet Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish to District 17, in writing, all the information requested in District 17's letter to us, dated April 20, 1990.

MAGNET COAL, INC.